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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF CALIFORNIA
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7 JOEY PORFIRIO BACA,

8 Plaintiff,

CV F 01 6433 AWI WMW P

9
10 vs.

ORDER RE: FINDINGS &
RECOMMENDATIONS (#47)

11 DR. KELLEY,

12 Defendant.
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16 Plaintiff is a state prisoner proceeding pro se in this civil rights action. The matter
17 was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local
18 Rule 72-302.

19 On November 5, 2004, [Findings and Recommendations](#) were entered,
20 recommending dismissal of this action for failure to state a claim upon which relief can be
21 granted. Plaintiff was provided an opportunity to file objections within thirty days. After
22 receiving numerous extensions of time to file objections, on November 15, 2005, plaintiff filed
23 objections to the findings and recommendations.

24 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule
25 73-305, this court has conducted a de novo review of this case. Having carefully reviewed the
26 entire file, the court finds the Findings and Recommendations to be supported by the record and

1 proper analysis. Nothing in the objections provides a reason to not adopt the Findings and
2 Recommendations. The only Defendant in the third amended complaint is Dr. Kelly. Prison
3 officials do not violate the Eighth Amendment if their actions are the result of negligence,
4 difference of medical opinion, or malpractice. Estelle v. Gamble, 429 U.S. 97, 106 (1976).
5 Here, Plaintiff's allegations only show negligence or malpractice by Dr. Kelly. To the extent
6 Petitioner contends in his objections that Doe Defendants delayed his medical treatment, neither
7 the third amended complaint nor second amended complaint contained Doe Defendants. Thus,
8 it unnecessary to determine if Plaintiff has stated a claim in the objections against the Doe
9 Defendants.

10 Accordingly, THE COURT HEREBY ORDERS that:

11 1. The Findings and Recommendations issued by the Magistrate Judge on
12 November 5, 2004, are adopted in full; and

13 2. This action is dismissed for failure to state a claim upon which relief can be
14 granted. The Clerk is directed to close this case.

15
16 IT IS SO ORDERED.

17 **Dated: November 30, 2005**
18 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE